

HOUSE BILL No. 1132

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13-18; IC 5-16-12; IC 36-1-12-15.

Synopsis: Drug testing of public works contractor employees. Repeals the current drug testing statute concerning public works contracts. Requires the employees of certain public works contractors to submit to drug testing. Specifies requirements for a contractor's employee drug testing program. Provides that a contract that complied with the current statute is considered to comply with the new statute.

Effective: July 1, 2008.

Van Haaften

January 8, 2008, read first time and referred to Committee on Labor and Employment.

C
o
p
y



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1132

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-16-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]:

4 **Chapter 12. Drug Testing of Employees of Public Works**
5 **Contractors**

6 **Sec. 1. (a) This chapter applies only to a public works contract**
7 **awarded after June 30, 2008.**

8 **(b) This chapter does not apply to a public works contract if the**
9 **estimated cost of the public works project is less than one hundred**
10 **fifty thousand dollars (\$150,000).**

11 **(c) This chapter does not apply to a person who is subject to**
12 **drug testing requirements under IC 8-2.1-24-18.**

13 **Sec. 2. As used in this chapter, "bid" includes a quotation.**

14 **Sec. 3. As used in this chapter, "construction industry**
15 **consortium" means a nonprofit organization, including but not**
16 **limited to:**

17 **(1) the Building and Construction Resource Center;**



C
o
p
y

- (2) the Indiana Construction Association;
- (3) Top Notch;
- (4) the Quality Connection; or
- (5) the Metropolitan Indianapolis Coalition for Construction Safety;

that operates a drug testing program that complies with section 11 of this chapter.

Sec. 4. (a) As used in this chapter, "contractor" refers to a person that:

- (1) submits a bid to do work under a public works contract; or
- (2) enters into or is awarded a public works contract.

(b) The term includes a subcontractor of a contractor.

Sec. 5. As used in this chapter, "employee" means a person who is employed by a contractor at the worksite of a public works project.

Sec. 6. As used in this chapter, "public money" means any money raised by:

- (1) fees;
- (2) taxes; or
- (3) special assessments;

imposed by a public entity created by statute.

Sec. 7. As used in this chapter, "public works contract" refers to a contract to perform a public works project.

Sec. 8. (a) As used in this chapter, "public works project" means the:

- (1) construction;
- (2) reconstruction;
- (3) alteration; or
- (4) renovation;

of a public building, facility, or other structure that is paid for, in whole or in part, from public money.

(b) The term includes any of the following:

- (1) The construction, alteration, or repair of:
 - (A) a highway, street, alley, bridge, sewer, drain, or other improvement; or
 - (B) a building, facility, or other structure leased by an entity created by statute under a lease containing an option to purchase.
- (2) A project covered by any of the following:
 - (A) IC 4-13.6.
 - (B) IC 5-16.

C
o
p
y



(C) IC 5-23.

(D) IC 8-23-9.

(E) IC 36-1-12.

Sec. 9. As used in this chapter, "substance abuse professional" means a substance abuse professional qualified in accordance with the federal procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40.281).

Sec. 10. (a) A solicitation for a public works contract must require each contractor that submits a bid for the work to submit with the bid:

(1) a statement that the contractor's drug testing program has been prequalified under subsection (c);

(2) a statement that the contractor participates in a construction industry consortium drug testing program that complies with section 11 of this chapter; or

(3) a statement that the contractor has an existing drug testing program that complies with section 11 of this chapter. A contractor submitting a statement under this subdivision is subject to review by the contracting agency or a designee of the contracting agency to ensure that the drug testing program complies with this chapter.

(b) A public works contract may not be awarded to a contractor unless the contractor:

(1) is prequalified under subsection (c); or

(2) not later than five (5) business days after the bid opening for the public works contract, submits written evidence that the contractor:

(A) participates in a construction industry consortium; or

(B) has an existing drug testing program that complies with section 11 of this chapter.

(c) An agency that has a prequalification process for contractors must require a contractor seeking a certificate of qualification to demonstrate that the contractor maintains an employee drug testing program that satisfies the requirements under section 11 of this chapter.

Sec. 11. A contractor's employee drug testing program must satisfy all of the following:

(1) The contractor's employees are included in a pool from which names of employees randomly are selected for testing, and the contractor conducts regular and periodic testing during the year in order to test at least twenty-five percent (25%) of the contractor's employees each year. If the

**C
o
p
y**



contractor participates in a multiemployer pool, the number of random drug tests administered each year must total at least twenty-five percent (25%) of the reported employees in the pool.

(2) The program contains at least a five (5) drug panel that tests for the following:

- (A) Amphetamines.
- (B) Cocaine.
- (C) Opiates (2000 ng/ml).
- (D) PCP.
- (E) THC.

(3) The program uses the levels set forth in the federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40.87) as the applicable cutoff levels for positive test results.

(4) The program uses an accredited laboratory approved by the United States Department of Health and Human Services for conducting the drug testing.

(5) The program uses and pays for at least one (1) substance abuse professional who performs or monitors, or both, all:

- (A) evaluations;
- (B) counseling; and
- (C) rehabilitation programs;

for an employee who fails a drug test.

(6) The program imposes disciplinary measures on an employee who fails a drug test. The disciplinary measures include, at a minimum, all of the following:

- (A) The employee is subject to suspension or immediate termination from employment.
- (B) The employee is not eligible for reinstatement to employment until the employee tests negative on a five (5) drug panel test.
- (C) The employee is subject to unscheduled periodic testing for at least one (1) year after reinstatement to employment.
- (D) The employee successfully completes an evaluation, all counseling sessions, and a rehabilitation program performed or monitored, or both, by a substance abuse professional of the program. The program or another benefit program that is paid for solely by the employer or other contributing employer, or both the employer and other contributing employer, must provide and pay for the evaluation, counseling sessions, and a rehabilitation

**C
O
P
Y**



program.

(7) After June 30, 2009, the program contains the following additional requirements:

(A) Before being eligible to work for the contractor, an employee must:

(i) have successfully passed an initial or pre-employment drug test; and

(ii) possess an identification card or other valid document from a drug testing program that indicates that the employee is available for work.

(B) An employee chosen for a random drug test must complete the test not more than seventy-two (72) hours after receiving notice of the random test. For purposes of this clause, it is assumed that the receipt for a notification that is sent by mail or carrier occurs not more than four (4) days after the notification is deposited in the United States mail or delivered with the carrier.

Sec. 12. (a) A public works contract must provide for the following:

(1) The contractor must implement the employee drug testing program described in section 11 of this chapter.

(2) Cancellation of the contract by the agency awarding the contract if the contractor:

(A) fails to implement the employee drug testing program during the term of the contract;

(B) fails to provide information regarding implementation of the contractor's employee drug testing program at the request of the agency; or

(C) provides to the agency false information regarding the contractor's employee drug testing program.

(b) The provisions of the public works contract relating to cancellation of the contract by the agency awarding the contract apply to cancellation of the public works contract under this section.

SECTION 2. IC 36-1-12-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. ~~(a)~~ A contract by the board for public work must conform to **all of the following**:

(1) The wage scale provisions of IC 5-16-7.

~~(b) A contract by the board for public work must conform with~~

(2) The antidiscrimination provisions of ~~IC 5-16-6~~ **IC 5-16-6-1**.

The board may consider a violation of ~~IC 5-16-6~~ **IC 5-16-6-1** a material breach of the contract, as provided in IC 22-9-1-10.

C
o
p
y



1 **(3) The employee drug testing provisions of IC 5-16-12.**
2 **However, a public works contract awarded before July 1,**
3 **2008, that complied with IC 4-13-18 (before its repeal), is**
4 **considered to comply with IC 5-16-12.**
5 SECTION 3. IC 4-13-18 IS REPEALED [EFFECTIVE JULY 1,
6 2008].

C
O
P
Y

